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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

SHARON A. WILLIAMS,	)	CASE NO. 5:04 CV 2435
	)	
Plaintiff,	)	
	)	JUDGE DONALD C. NUGENT
vs.	)	
	)	
	)	<u>MEMORANDUM OPINION</u>
ALLSTATE INSURANCE COMPANY,	)	<u>AND ORDER</u>
	)	
Defendant.	)	
	)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge McHargh. The Report and Recommendation (ECF #13), submitted on April 19, 2005, recommending that Defendant's Motion for Dismiss (ECF #8) be granted in part and denied in part, is hereby ADOPTED in part and REVISED in part by this Court. A timely objection to the Magistrate Judge's position has been filed by the Defendant. The Plaintiff has not filed an objection.

**Standard of Review for a Magistrate Judge's Report and Recommendation**

The applicable district court standard of review for a magistrate's report and

recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case de novo. FED. R. CIV. P. 72(b) provides this standard of review. It states, in pertinent part, the following:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Accordingly, this Court will review the Report and Recommendation, to which timely objections have been filed, de novo. *See Dacas Nursing Support Sys., Inc. v. NLRB*, 7 F.3d 511 (6<sup>th</sup> Cir. 1993).

### **Analysis**

The Court has reviewed the Report and Recommendation of this case de novo. *See Massey v. City of Ferndale*, 7 F.3d 506 (6<sup>th</sup> Cir. 1993). The Court has also considered all of the pleadings, affidavits, motions, and filings of the parties. This Court adopts the findings of fact and conclusions of law of the Magistrate Judge as to the first issue. Magistrate Judge McHargh correctly determined that Defendant's Motion to Dismiss should be granted as to Plaintiff's state law age discrimination claim. This Court revises the Magistrate Judge's findings as to the Defendant's Motion to Dismiss Plaintiff's state public policy claim and grants dismissal of this claim.

### **State Public Policy Claim**

Defendant claims that the Magistrate Judge erred in recommending that

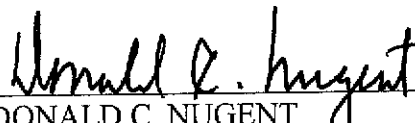
Defendant's Motion to Dismiss be denied as to Plaintiff's state public policy claim. Defendant claims that the Magistrate Judge did not address the legal standard set forth in *Wiles . Medina Auto Parts*, 96 Ohio St. 3d 240 (2002) - which is the most recent applicable state case law on the issue of public policy. The Court in *Wiles* held that "there is no need to recognize a common-law action for wrongful discharge if there already exists a statutory remedy that adequately protects society's interests." *Id.* at 244. The Magistrate Judge did not address this case.

*Wiles* supercedes the state cases cited in the Report and Recommendation. (ECF #13) In *Carrasco v. NOAMTC, Inc.* No. 03-4229, 2004 U.S. App. LEXIS 25033 (6<sup>th</sup> Cir. 2004), the 6<sup>th</sup> Circuit dismissed a public policy claimed based on the holding in *Wiles*. The statutory remedies allowed under Ohio Rev. Code §4112.14 adequately protect the interests of the citizens of Ohio. Therefore, no public policy remedy is needed.

#### Conclusion

For the foregoing reasons, the Report and Recommendation of Magistrate Judge McHargh is hereby ADOPTED in part and REVISED in part. Accordingly, Defendant's Motion to Dismiss (ECF #8 ) is GRANTED as to both the state law age discrimination claim and the state public policy claim.

IT IS SO ORDERED.

  
DONALD C. NUGENT  
United States District Judge

DATED: May 31, 2005